

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re:

FRED FULLER OIL & PROPANE, INC.,

Debtor.

CHAPTER 11
CASE NO. 14-12188-JMD

Hearing Date: March 22, 2016

Hearing Time: 11:00 a.m.

**REQUEST OF FREDERICK FULLER AND OTHERS
FOR PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM**

Frederick Fuller, Fuller Goffstown Realty Trust, Fuller Family Tracy Lane Realty Trust, Fuller Family Tracy Lane II Realty Trust, Tracy Lane III Realty Trust, Fuller Milford LLC and Fuller Family MFD Realty Trust (collectively, the “Claimants”) hereby request allowance and payment of an administrative expense claim in the amount of \$6,824,000 (the “Fuller Administrative Claim”). As grounds therefor, the Claimants state:

1. By order entered November 26, 2014 [Docket No. 105] (the “Sale Order”), this Court approved a sale of assets to Rymes Heating Oils, Inc. (“Rymes”) pursuant to an Amended Asset Purchase Agreement dated as of November 25, 2014 [Docket No. 107] (the “APA”). Among the Purchased Assets that the Debtor was required to convey to Rymes were 16 properties to which the Claimants held title (the “Claimants’ Properties”). Although the Sale Order (recitals O and P) expressly acknowledged that property not then standing in the name of the Debtor would be included in the sale, the transaction was structured as a sale of assets by the Debtor.

2. Frederick Fuller signed the APA as a consenting party, and in connection with the closing of the APA, the Claimants executed deeds conveying the Claimants’ Properties to Rymes. Given the haste with which the transaction proceeded, there was no agreement

specifying the consideration to be paid to the Claimants. The Claimants estimate that the Claimants' Properties have a fair market value of approximately \$6,824,000, net of liens to which they were subject at the time of conveyance. Under the law of unjust enrichment as recognized by the courts of New Hampshire, the Claimants are entitled to fair compensation for the benefit received by the estate. *See, e.g., Petrie-Clemons v. Butterfield*, 122 N.H. 120, 127 (1982) (even when someone "innocently receives a benefit and passively accepts it," the value thereof must be paid in order to avoid unjust enrichment of the recipient).

3. To judge from the proposed disclosure statement filed in connection the Debtor's liquidating plan, the Debtor (through its chief restructuring officer and counsel) seems to take the position not only that the Claimants are owed no consideration, in either the legal or colloquial sense, for conveying the Claimants' Properties for the benefit of the Debtor's estate but also that the Claimants and related persons (such as creditor, Dawn Coppola) should be sued for certain amounts they allegedly received from the Debtor. Putting aside the defenses that Frederick Fuller and Dawn Coppola will assert to the alleged claims against them, those claims – even without regard to defenses – fall far short of offsetting the benefit conferred on the bankruptcy estate through the Claimants' conveyance of the Claimants' Properties. And while it has been suggested that the Claimants' Properties somehow belonged to the Debtor even though title resided in the Claimants, it should be noted that half of the properties were owned by the Claimants before the Debtor was even incorporated. As to other properties, where the Debtor funded all or a portion of the purchase price, no one has suggested that this was done at a time when the Debtor was in financial distress or the Claimants were otherwise not free to receive such funds from the Debtor as the Debtor saw fit. In sum, it would be inaccurate to view the

Claimants' Properties as belonging to the Debtor, or even subject to any claim of the Debtor, at the time that the Claimants conveyed those properties to Rymes.

4. For the foregoing reasons, this Court should allow and direct the payment to Claimants of the Fuller Administrative Claim.

Respectfully submitted,

Dated: February 17, 2016

/s/ Olga L. Gordon
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UNITED STATES BANKRUPTCY COURT
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Hearing Date: March 22, 2016

Hearing Time: 11:00 a.m.

**ORDER GRANTING REQUEST OF FREDERICK FULLER
AND OTHERS FOR PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM**

Upon consideration of the Request of Frederick Fuller and Others (the “Claimants”) for Payment of Administrative Expense Claim (the “Request for Payment”) in the above-captioned bankruptcy case, after due deliberation and good cause appearing therefore, it is hereby

ORDERED, that the Request for Payment is granted; and it is further

ORDERED, that the Claimants’ administrative expense claim is allowed in the amount of \$6,824,000 (the “Fuller Administrative Expense Claim”) and it is further

ORDERED, that the Debtor is directed to pay the Fuller Administrative Expense Claim *pro rata* with other administrative expenses.

ENTERED in Manchester, New Hampshire.

Dated: _____

The Honorable J. Michael Deasy
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

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Hearing Date: March 22, 2016
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NOTICE OF HEARING

Notice is hereby given that a hearing on the *Request of Frederick Fuller and Others for Payment of Administrative Expense Claim* has been scheduled for March 22, 2016 at 11:00 a.m. before the Honorable J. Michael Deasy at the United States Bankruptcy Court, 1000 Elm Street, Courtroom 2, Manchester, New Hampshire. Objections must be filed by March 8, 2016.

Respectfully submitted,
FREDERICK FULLER

By his attorneys,

Murtha Cullina LLP

/s/ Olga L. Gordon
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CERTIFICATE OF SERVICE

I, Olga L. Gordon, hereby certify that on the 17th day of February, 2016, I served copies of the following pleadings, by first-class mail, postage prepaid or by electronic transmission as indicated, upon the parties listed on the attached Service List:

1. ***Request of Frederick Fuller and Others for Payment of Administrative Expense Claim;***
2. ***Notice of Hearing Re: Request of Frederick Fuller and Others for Payment of Administrative Expense Claim; and***
3. ***[Proposed] Order Granting Request of Frederick Fuller and Others for Payment of Administrative Expense Claim.***

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